

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 41/2008

Wednesday, this the 3rd day of September, 2008.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Smt.S.B.Silva,
W/o late Shri Suresh Kaimal,
3 B, Chakolas Water Ford Apartments,
Pandit Karuppan Road,
Thevara, Cochin-13. ...Applicant

(By Advocate M/s P.Santhalingam & K.Usha)

Vs.

1. The Commissioner,
Central Excise & Customs,
C.R.Building, I.S.Press Road, Cochin -18.
2. Chief Accounts Officer,
Office of the Central Excise & Customs,
C.R.Building, I.S.Press Road, Cochin -18.
3. K.R. Thankamma,
W/o late Surendharan S Nair,
Subha Nilayam, Kottayam,
Thrikkodithanam,
Changanassery, Kottayam. Respondents

(By Advocates Mr.C.M.Nazar, ACGSC(R1&2) and
Mr. V. Madhusudhanan (R3).

The application having been heard on 3.8.2008
the Tribunal on the same day delivered the following:

ORDER
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

“ So heartening to the Judges' bosom is the happy ending of a litigation where the law is declared by the Court and justice is accomplished by the parties settling the differences, assisted by activist judicial suggestions and promoted by constructive counselling by advocates.”

Kanta Goel v. B.P. Pathak, (1977) 2 SCC 814,


2. The instant case is one that comes under the above category. For having a grip of the case, the synopsis in the OA is sufficient and the same reads as under:-
3. The applicant is the legally wedded wife of late Shri Suresh Kaimal, who was employed in Central Excise Department. Shri Suresh Kaimal has passed away after a brief illness. The applicant and her two children and the mother of the deceased husband are the legal heirs.. the applicant requested the first respondent to release the pensionary benefits and the provident fund amount of her late husband. Now, the second respondent has informed that the deceased husband's mother is the nominee for the general provident fund and hence the amount can be disbursed only to the nominee. The provident fund of the deceased husband of the applicant has to be distributed among the legal heirs. The nominee has no absolute right over such amount.
4. The official respondents have contested the OA stating that the rules provide for disbursement of the Fund dues only to the nominee. Now the nominee, i.e. the mother of the deceased filed an affidavit which inter alia reads as under:-



"3. Shri Suresh Kaimal was a subscriber to General Provident Fund. The amount due in the credit of the General Provident Fund Account of Shri Suresh Kaimal has not been disbursed to the legal heirs. I am the nominee as per the P.F. Records. But I have not received the P.F closure amount.

4. Late Shri Suresh Kaimal was governed by Hindu Succession Act. Myself, the applicant and her two children are also governed by Hindu Succession Act. Hence, the four legal heirs are entitled to succeed to the General provident Fund amount in equal shares. It is true that I was nominated by Shri Suresh Kaimal to receive the P.F amount. If the amount is paid to me by virtue of the nomination, I have to pay $\frac{3}{4}$ of the amount to the applicant being the share due to herself and her two minor children. However, I submit that I have absolutely no objection against the payment of the share due to the applicant and her two children, directly by the Respondents 1 or 2 and paying the balance $\frac{1}{4}$ to me. I submit that it may be better to distribute the shares directly by the Department."

5. In a recent case of *Vidhyadhari v. Sukhrana Bai*, (2008) 2 SCC 238 nomination was in favour of second wife while no nomination was there in favour of the first wife. The second wife had four children. While deciding the issue of who should be given the succession certificate the Apex Court has held that though the second wife cannot be said to be legally wedded to the individual as the same was during the lifetime of the first wife, nevertheless, as the illegitimate children are entitled to the share, it was held that the succession certificate could be in the name of the second wife, but it was also held that the first wife is entitled to one-fifth of the share in the property, including the provident fund. The Apex Court has observed in this regard as under:-



"To balance the equities we would, therefore, choose to grant succession certificate to Vidhyadhari but with a rider that she would protect the 1/5th share of Sukhrana Bai in Sheetaldeen's properties and would hand over the same to her. As the nominee she would

hold the 1/5th share of Sukhrana Bai in trust and would be responsible to pay the same to Sukhrana Bai. We direct that for this purpose she would give a security in the trial court to the satisfaction of the trial court."

6. In the case in hand, both the nominee and the applicant are to be treated as legal heirs and the nominee has volunteered to part with 3/4th of the provident fund credit balance in the name of the deceased government servant. As such, there is no impediment in making the payment as suggested by the mother of the deceased.

7. In view of the above, the OA is disposed of with a direction to the respondents 1 and 2 that the entire provident fund accumulations in the name of late Suresh Kaimal including interest accumulated till date (if the same is not calculated, the same should be calculated now and the account updated, as the amount has been lying with the department so far), be divided into three-fourth and one fourth and cheques for the requisite amounts be drawn –

(a) in favour of the applicant Smt. S.B.Silva, in respect of three fourth of the up-to-date credit balance and

(b) in favour of Smt. K.R. Thankamma, mother of late Suresh Kaimal in respect of balance one-fourth of the up-to-date credit balance.

8. The above drill be completed within a period of two months from the date of communication of this order. No costs.


(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.